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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Council of Higher Education for Virginia (SCHEV)
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 40-20
<b>Regulation title</b>	REGULATIONS FOR THE SENIOR CITIZEN HIGHER EDUCATION PROGRAM
<b>Action title</b>	Minor changes in eligibility based on changes in the Code.
<b>Document preparation date</b>	November 30, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The eligibility section of the regulation, 8 VAC 40-20-20, has been amended to reflect changes in Virginia Code §23-38.56 that increase the income cap on senior citizens eligible for the program and allow senior citizens of any income level to audit any class for academic credit. A paragraph was added to clarify that a senior citizen enrolled under these provisions is expected to meet attendance and course requirements. A change was made to 8 VAC 40-20-30 stating that state tax form would now be allowed as a proof of income eligibility. This change was made based on a change in the Virginia Code §23-38.56 stating that Virginia taxable income would govern the eligibility.

### Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

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The Council adopted the changes to the regulation entitled REGULATIONS FOR THE SENIOR CITIZEN HIGHER EDUCATION PROGRAM at their business meeting on July 16, 2003, TabR4a of the Approved Minutes.

### Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

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These amendments to regulations are promulgated under the authority granted to SCHEV under Virginia Code §§23-38.54 et al. to control the procedure for administering the Senior Citizen Higher Education Program. Specifically:

§ 23-38.56. *Attendance at state institutions; conditions.*

*A senior citizen shall be permitted, under regulations as may be prescribed by the State Council of Higher Education:*

*(i) To register for and enroll in courses as a full-time or part-time student for academic credit if such senior citizen had a taxable individual income not exceeding \$15,000 for Virginia income tax purposes for the year preceding the year in which enrollment is sought;*

*(ii) To register for and audit courses offered for academic credit; and*

*(iii) To register for and enroll in courses not offered for academic credit in any state institution of higher education in this Commonwealth.*

*Such senior citizen shall pay no tuition or fees except fees established for the purpose of paying for course materials, such as laboratory fees, but shall be subject to the admission requirements of the institution and a determination by the institution of its ability to offer the course or courses for which the senior citizen registers. The State Council of Higher Education shall establish procedures to ensure that tuition-paying students are accommodated in courses before senior citizens participating in this program are enrolled. However, the state institutions of higher education may make individual exceptions to these procedures when the senior citizen has completed seventy-five percent of the requirements for a degree.*

The above section provides the authority for the change in income levels as well as the change in requirements to a state income tax form based on §23-38.56(i). The above section provides the authority for the additional paragraph regarding attendance and course assignments as general elements of eligibility. The amendments conform the regulations to the statutory law that governs them.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The primary purpose of these regulations is to bring them into concurrence with their governing Code sections.

8 VAC 40-20-20

The General Assembly raised the maximum level of income for senior citizens to receive tuition-free education from \$10,000 to \$15,000. This change to Virginia Code § 23-38.56 necessitated a change to the regulation to reflect the new figure. The language allowing senior citizens of any income level to audit a course given for academic credit, as well as noncredit courses, is amended to reflect the language change in the Code §23-38.56 as well. This makes the pursuit of a degree accessible to those in a lower income bracket while not denying all senior citizens the opportunity to take classes. This encourages education throughout one's lifetime and encourages senior citizens to stay active and engaged as citizens.

The addition of the statement that senior citizens are not exempt from attendance and course assignment requirements makes clear that senior citizens are to be treated as any other student with respect to the classroom environment. This is to make clear that while senior citizens may be eligible to be exempt from tuition, they are still students with the responsibilities inherent with the position.

8 VAC 40-20-30

The change to using a state income tax form as the acceptable form to prove income is a technical change. The Virginia Code § 23-38.56 was altered to say, "a taxable individual income not exceeding \$15,000 for Virginia income tax purposes", would be considered for eligibility. A state income tax form would contain the necessary information about the level of Virginia taxable income and would be more appropriate than the federal income tax form that was previously given as an example.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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These changes are expected to be noncontroversial in nature as they reflect changes in the Code that require amendments to the regulations.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

### 8 VAC 40-20-20

Eliminates the figure of \$10,000 and replaces it with, "\$15,000". After "the individual may take a course for academic credit" added "free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees." Eliminates, "If the person's taxable income exceeded \$10,000, the individual may only audit the course for free." After "A senior citizen, regardless of income level," adds the phrase, "audit a course that is given for academic credit or". The remainder of the sentence was modified to say, "take a noncredit course free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees." These amendments are required in order to conform the regulations to Code.

Under the second condition, 2., eliminated "unless the senior citizen has completed 75% of the degree requirements necessary for the degree. At such time in the senior citizen's program, the senior citizen can enroll in courses at the same time as other tuition paying students." Added, "State institutions of higher education may make individual exceptions to this procedure when the senior citizen has completed seventy-five percent of the requirements for the degree." This change was made to make the regulation language more closely reflect the language of its governing Code section, §23-38.56.

The following paragraph is added to the end of the section, "Nothing in this regulation exempts a senior citizen enrolled in a course from the requirements for attendance and completion of course assignments." This amendment is needed to clarify what eligibility requirements are in place for senior citizens.

### 8 VAC 40-20-30

Eliminates "an IRS 1040 form" and replaces it with, "a state income tax form." This amendment is required in order to conform the regulations to Code § 23-38.56.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The amendments to the regulations provide no disadvantages to the public, private citizens, or regulated community. Conformity to the Code and clarification of the provisions is viewed as a net advantage to each of the affected sectors as the regulations are brought into conformity with the Code of Virginia.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	\$0
<b>Projected cost of the regulation on localities</b>	\$0
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	\$0
<b>Agency’s best estimate of the number of such entities that will be affected</b>	15 public senior institutions and 24 public two-year institutions.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	\$0

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

Amendment of the regulations is both the only viable solution and least burdensome.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

These changes provide clarification to the regulation and will, accordingly, greatly reduce possible confusion over who is eligible. With these changes, the senior citizen student and the

student’s family will know that any senior citizen may audit a class, or if they are below the Virginia taxable income level prescribed by the Code, may take a class for credit. This reassurance is expected to have a positive impact on family stability and no negative consequences are foreseen.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
20		That a senior citizen have less that \$10,000 income.	That the senior citizen have less than \$15,000 income. The rationale is to update the regulations to conform to the Code.
20		That with a taxable income below \$10,000 a senior citizen may take a course for academic credit for free	That the senior citizen may take the course for academic credit free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees.
20		That any senior citizen may take a noncredit course free of tuition or required fees except certain course fees.	That any senior citizen may audit a degree credit course or take a noncredit course free of tuition or fees, except for fees established for the purpose of paying for course materials, such as laboratory fees. The rationale is to allow greater access to the educational experience for all senior citizens and to make the language conform to the language of the Code.
20		That a senior citizen may enroll at the same time as tuition-paying students when they have completed 75% of their degree.	That the state institutions may make individual exceptions to allow a senior citizen that has completed 75% of the degree to enroll at a time other than after tuition-paying students have been accommodated. The rationale of this change was to make the language of the regulation conform to the language of the Code.
20			New language added that states that nothing in this regulation exempts a senior citizen enrolled in a course from the requirements for attendance and completion of course assignments.
30		That the review of an IRS	That the review of a state income tax form

		1040 form can provide the determination of eligibility for the program.	can provide the determination of eligibility for the program. The rationale is that this is a state program and therefore evaluation of state income would be more appropriate.
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